

AMENDED IN SENATE SEPTEMBER 1, 2015

AMENDED IN ASSEMBLY APRIL 22, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 888**

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**Introduced by Assembly Member Bloom**

February 26, 2015

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An act to add Chapter 5.9 (commencing with Section 42360) to Part 3 of Division 30 of the Public Resources Code, relating to waste management.

LEGISLATIVE COUNSEL’S DIGEST

AB 888, as amended, Bloom. Waste management: plastic microbeads.

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without giving a specified warning, or from discharging or releasing such a chemical into any source of drinking water, except as specified. Existing law prohibits the sale of expanded polystyrene packaging material by a wholesaler or manufacturer. Existing law prohibits a person from selling a plastic product in this state that is labeled with the term “compostable,” “home compostable,” or “marine degradable” unless, at the time of sale, the plastic product meets the applicable ASTM International standard specification.

This bill would prohibit, on and after January 1, 2020, a person, as defined, from selling or offering for promotional purposes in this state a personal care product containing plastic microbeads that are used to

exfoliate or cleanse in a rinse-off product, as specified. The bill would exempt from those prohibitions the sale or promotional offer of a product containing less than 1 part per million (ppm) by weight of plastic microbeads, as provided. *The bill would authorize the Department of Toxic Substances Control to additionally exempt plastic microbeads contained in a personal care product, alternatives to plastic microbeads contained in a personal care product, and a personal care product containing plastic microbeads following a specified alternative analysis process, if a certain finding is made. The bill would require the manufacturer submitting an alternative analysis to reimburse the department for reasonable costs incurred implementing these alternative analysis provisions.*

The bill would make a violator liable for a civil penalty not to exceed \$2,500 per day for each violation. The bill would authorize the penalty to be assessed and recovered in a civil action brought in any court of competent jurisdiction by the Attorney General or local officials. The bill would require the civil penalties collected in an action brought pursuant to the act to be retained by the office that brought the action.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 5.9 (commencing with Section 42360)  
2 is added to Part 3 of Division 30 of the Public Resources Code, to  
3 read:

4  
5 CHAPTER 5.9. PLASTIC MICROBEADS NUISANCE PREVENTION  
6 LAW  
7

8 42360. The Legislature finds and declares all of the following:

9 (a) Plastic does not biodegrade into elements or compounds  
10 commonly found in nature like other organic materials, but, instead,  
11 upon exposure to the elements photodegrades into smaller pieces  
12 of plastic causing land and water pollution that is virtually  
13 impossible to remediate.

14 (b) Plastic pollution is the dominant type of anthropogenic debris  
15 found throughout the marine environment.

16 (c) Plastic pollution is an environmental and human health  
17 hazard and a public nuisance.

1 (d) Microplastics that are five millimeters or less in diameter  
2 become bioavailable as soon as they enter the marine environment  
3 and are ingested by marine organisms.

4 (e) Microplastics are persistent organic compounds that attract  
5 other pollutants commonly present in the environment, many of  
6 which are recognized to have serious deleterious impacts on human  
7 health or the environment, including DDT, DDE, PCBs, and flame  
8 retardants.

9 (f) PAHs, PCBs, and PBDEs from plastic transfer to fish tissue  
10 when ingested and bioaccumulate.

11 (g) Fish that humans consume have been found to ingest  
12 microplastics, which are then ingested by the humans who consume  
13 these fish.

14 (h) Consumer personal care products such as facial scrubs,  
15 soaps, and toothpaste increasingly contain thousands of  
16 microplastics in the form of plastic microbeads that are flushed  
17 down drains or make their way into the environment by other  
18 means as part of their intended use.

19 (i) Plastic microbeads in personal care products are generally  
20 not recoverable through ordinary wastewater treatment and can  
21 be released into the environment.

22 (j) Plastic microbeads have been found in surface waters within  
23 the United States, as well as in fish, marine mammals, reptiles,  
24 mussels, and worms.

25 (k) There are economically feasible alternatives to plastic  
26 microbeads used in personal care products, as evidenced by the  
27 current use of biodegradable, natural, abrasive materials in personal  
28 care products such as beeswax, shells, nuts, seeds, and sand.

29 42361. As used in this chapter, the following terms have the  
30 following meanings:

31 (a) “*Department*” means *Department of Toxic Substances*  
32 *Control*.

33 ~~(a)~~

34 (b) “Natural exfoliant” means a substance occurring in and  
35 generated by the natural environment and includes, but is not  
36 limited to, the following substances: walnut shells, apricot hulls,  
37 sand, clay, or beeswax.

38 ~~(b)~~

39 (c) “Person” means an individual, business, or other entity.

40 ~~(e)~~

(d) (1) “Personal care product” means an article intended to be rubbed, poured, sprinkled, or sprayed on, introduced to, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and an article intended for use as a component of that type of article.

(2) “Personal care product” does not include a prescription drug, as defined in Section 110010.2 of the Health and Safety Code.

~~(d)~~

(e) “Plastic microbead” means an intentionally added solid plastic particle measuring five millimeters or less in every dimension.

42362. On and after January 1, 2020, a person shall not sell or offer for promotional purposes in this state any personal care products containing plastic microbeads that are used to exfoliate or cleanse in a rinse-off product, including, but not limited to, toothpaste.

42363. Section 42362 shall not apply to ~~either~~ any of the following:

(a) A person that sells or offers for promotional purposes a personal care product containing plastic microbeads in less than 1 part per million (ppm) by weight.

(b) A product containing natural exfoliants that does not contain plastic microbeads.

*(c) A personal care product containing plastic microbeads, or a potential alternative to plastic microbeads, that has been exempted by the department pursuant to Section 42363.5.*

*(d) Plastic microbeads and alternatives to plastic microbeads that are contained in a personal care product and that have been exempted by the department pursuant to Section 42363.5.*

42363.5. (a) *The department shall make available the two-stage alternative analysis process established in regulations adopted pursuant to Section 25253 of the Health and Safety Code for the purpose of evaluating plastic microbeads and alternatives to plastic microbeads to the following entities for voluntary submissions pursuant to subdivision (b):*

*(1) A manufacturer of a personal care product containing plastic microbeads, or a potential alternative to plastic microbeads.*

*(2) A manufacturer of a plastic microbead that is contained in a personal care product.*

1     (3) *A manufacturer of an alternative to a plastic microbead that*  
2 *is contained in a personal care product.*

3     (b) *The department, in accordance with that two-stage*  
4 *alternative analysis process, and consistent with subdivision (c),*  
5 *shall evaluate the alternative analysis to determine if the plastic*  
6 *microbead, proposed alternative, or personal care product*  
7 *containing plastic microbeads or an alternative poses a hazard to*  
8 *public health or the environment and how to limit or to reduce the*  
9 *level of hazard posed by the plastic microbead or the alternative.*  
10 *Following evaluation, the department may exempt the plastic*  
11 *microbead, its alternative, or the personal care product from the*  
12 *requirements of Section 42362 under either of the following*  
13 *circumstances:*

14     (1) *The department finds that a regulatory response, as*  
15 *described in Article 6 (commencing with Section 69506) of Chapter*  
16 *55 of Division 4.5 of Title 22 of the California Code of Regulations,*  
17 *for the plastic microbead, its alternative, or the personal care*  
18 *product is necessary to protect public health, the environment, or*  
19 *both, and the department requires implementation of one or more*  
20 *of the regulatory responses as a condition of exempting the plastic*  
21 *microbead, its alternative or the personal care product from*  
22 *Section 42362.*

23     (2) *The department finds that a regulatory response for the*  
24 *plastic microbead, its alternative, or the personal care product is*  
25 *not necessary to protect public health, the environment, or both.*

26     (c) *For purposes of an alternative analysis under this section,*  
27 *all of the following apply:*

28     (1) *Evaluation of the alternative analysis and selection of any*  
29 *regulatory responses shall be in consultation with the State Water*  
30 *Resources Control Board and the Department of Fish and Wildlife.*

31     (2) *An alternative analysis shall consider natural exfoliant*  
32 *alternatives.*

33     (3) *The department shall only accept complete alternative*  
34 *analyses for evaluation. An abridged alternative analysis shall*  
35 *not be accepted for purposes of evaluation under this section.*

36     (4) *For alternative analyses submitted before January 1, 2017,*  
37 *the department shall complete the evaluation and notify the*  
38 *manufacturer of its decision before January 1, 2018, including*  
39 *whether the product is exempt or if a regulatory response is*  
40 *necessary. The department shall establish a schedule to implement*

1 *this paragraph. It is the intent of the Legislature, in enacting this*  
2 *paragraph, to provide product manufacturers with a minimum of*  
3 *two years following the department's decision to develop*  
4 *acceptable alternatives to plastic microbeads.*

5 *(d) (1) A manufacturer that submits an alternative analysis*  
6 *pursuant to this section shall reimburse, within 60 days of receiving*  
7 *an invoice, the department for the reasonable costs incurred by*  
8 *the department in implementing this section. If there is a dispute*  
9 *over costs, the manufacturer shall pay any undisputed costs and*  
10 *shall meet and confer with the department to resolve the disputed*  
11 *items.*

12 *(2) A manufacturer may resubmit an alternative analysis, which*  
13 *shall be considered a new review.*

14 *(3) The department shall strive to limit the costs of each review*  
15 *conducted pursuant to this section to no more than two hundred*  
16 *fifty thousand dollars (\$250,000). If the department estimates that*  
17 *costs of a review may exceed two hundred fifty thousand dollars*  
18 *(\$250,000), the department shall seek approval of the manufacturer*  
19 *submitting the alternative analysis before incurring costs in excess*  
20 *of two hundred fifty thousand dollars (\$250,000). A manufacturer*  
21 *submitting an alternative analysis shall have the right to withdraw*  
22 *the analysis before incurring costs in excess of two hundred fifty*  
23 *thousand dollars (\$250,000).*

24 42364. (a) A person who violates or threatens to violate Section  
25 42362 may be enjoined in any court of competent jurisdiction.

26 (b) (1) A person who has violated Section 42362 is liable for  
27 a civil penalty not to exceed two thousand five hundred dollars  
28 (\$2,500) per day for each violation in addition to any other penalty  
29 established by law. That civil penalty may be assessed and  
30 recovered in a civil action brought in any court of competent  
31 jurisdiction.

32 (2) In assessing the amount of a civil penalty for a violation of  
33 this chapter, the court shall consider all of the following:

34 (A) The nature and extent of the violation.

35 (B) The number of, and severity of, the violations.

36 (C) The economic effect of the penalty on the violator.

37 (D) Whether the violator took good faith measures to comply  
38 with this chapter and when these measures were taken.

39 (E) The deterrent effect that the imposition of the penalty would  
40 have on both the violator and the regulated community as a whole.

1 (F) Any other factor that justice may require.

2 (c) Actions pursuant to this section may be brought by the  
3 Attorney General in the name of the people of the state, by a district  
4 attorney, by a city attorney, or by a city prosecutor in a city or city  
5 and county having a full-time city prosecutor.

6 (d) Civil penalties collected pursuant to this section shall be  
7 paid to the office of the city attorney, city prosecutor, district  
8 attorney, or Attorney General, whichever office brought the action.

9 42366. This chapter does not alter or diminish any legal  
10 obligation otherwise required in common law or by statute or  
11 regulation, and this chapter does not create or enlarge any defense  
12 in any action to enforce the legal obligation. Penalties and sanctions  
13 imposed pursuant to this chapter shall be in addition to any  
14 penalties or sanctions otherwise prescribed by law.